IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

MFA.No. 1578 of 2001()

OPMV.1291/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT:
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1. PHILOMINA JOSEPH, AGED 44, WIFE OF LATE SRI.P.C.JOSEPH.

2. JOFIN JOSEPH, AGED 14, SON OF LATE SRI.P.C.JOSEPH.

3. JEENA JOSEPH, AGED 11, DAUGHYTER OF LATE SRI.P.C.JOSEPH.

4. ALIAYAMMA CHEECKU, AGED 77, W/O.LATE CHEECKU.(DIED)

THE DEATH OF APPELLANT no.4 IS RECORDED VIDE ORDER DT. 5.11.2007 ON MEMO DT.8.7.2005 (IF 5346/05)

MINOR APPELLANTS 2 AND 3 ARE REPRESENTED BY THEIR NATURAL GUARDIAN MOTHER SMT.PHILOMINA JOSEPH, THE FIRST APPELLANT.

ALL APPELLANTS ARE RESIDING AT PUTHEUSSERY HOUSE, AMALA BHAVAN CONVENT ROAD, (ASAN LANE), ALWAYE.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI

RESPONDENTS:
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1. THE MANAGING DIRECTOR, K.S.R.T.C., THIRUVANANTHAPURAM.

2. RAVI, S/O.NARAYANANKUTTY, KAKKATTUTHADOM PARAMBU, S.N.NAGAR, KODENCHERRY, MUKUNDAPURAM. (DELETED).

2ND RESPONDENT IS DELTERED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT-VIDE ORDER DATED 9.10.2007 ON IA.2148/07.

BY ADV. SRI.JOHNSON P JOHN,SC KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 5.11.2007, THE COURT ON 05/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1578 OF 2001

Dated this the 5th day of November, 2007

JUDGMENT

Koshy, J.

Husband of the first appellant met with an accident on 3.1.1993. While he was driving a jeep having registration No.KRF 8546, his jeep was hit by the KSRTC bus, owned by the first respondent. The Tribunal found that the accident occurred due to the negligent driving of the bus by the second respondent and compensation was payable by respondents 1 and 2 and the first respondent employer was directed to deposit compensation of Rs.11,750/-. The claim was for Rs.3,12,750/-. Only the quantum of compensation is disputed in this appeal.

2. The claim was originally filed by the injured himself. But before the case was adjudicated, he died. Thereafter his wife, two minor children and aged mother were impleaded. The accident occurred on 3.1.1993. His death was on 10.2.1999. According to the appellants, the impact of the accident resulted in his death. Exhibit A6 wound certificate shows that the petitioner sustained the following injuries:

"1. Contusion 3 x 3 ® temporal region of scalp
2. Multiple abrasion right chest
3. Surgery undergone right chest."

Two other certificates issued by the Surgeon of the K.M.K.Hospital were also produced. The certificate dated 8.3.1999 shows that the petitioner was having side effect and inconvenience and he was walking with difficulty and the disability was due to motor accident. The second certificate dated 16.3.1999 shows that he cannot do any work because of the after effects of the motor accident. He died in 1999 after six years at the age of 49. However, there is no direct evidence that all these injuries mentioned in Exhibits A7 and A8 certificates are occurred due to the accident as the doctor was not examined, even though the accident might have accelerated death of the deceased, no medical certificate was produced to show the cause of death. No compensation was awarded for disability or loss of earning capacity. It was stated by learned counsel for the appellants that after the accident the family was totally ruined and they were unable to examine the doctor or prosecute the case properly because of the total lack of money. In any event, considering the certificates, Exhibits A6, A7 and A8, we are of the view that the accident accelerated his death and he was unable to do any work after the accident and before that he was maintaining

his family. But, in the absence of any direct evidence that the death was due to the injuries sustained in the accident, compensation cannot be awarded for death in this case. However, considering the nature of the accident and the injuries sustained, we award compensation of Rs.35,000/- for disability and loss of earning power. The above amount of Rs.35,000/- should be deposited by the first respondent K.S.R.T.C with 7.5% interest from the date of application till the date of deposit over and above the compensation awarded by the Tribunal. On deposit of the above, the wife and children of the deceased, ie., the first three appellants are entitled to withdraw the amount in equal proportion. The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1578 OF 2001

JUDGMENT

5.11.2007